

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

STROEHMANN BAKERIES, L.C.

Employer

and

Case 4-RM-1235

LOCAL 6, BAKERY, CONFECTIONERY & TOBACCO

WORKERS INTERNATIONAL UNION, AFL-CIO

Union Involved

and

TEAMSTERS LOCAL 773, INTERNATIONAL

BROTHERHOOD OF TEAMSTERS, AFL-CIO

Union Involved

STROEHMANN BAKERIES, L.C.

Employer

and

Case 4-UC-354

TEAMSTERS LOCAL 773, INTERNATIONAL

BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

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**ORDER DISMISSING PETITIONS IN CASES 4-UC-354 AND 4-UC-355 AND  
DECISION AND DIRECTION OF ELECTION IN CASE 4-RM-1235**

On March 8, 1999, Stroehmann Bakeries, L.C., herein called the Employer, filed a petition in Case 4-RM-1235 under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act. On March 12, 1999, Teamsters Local 773, International Brotherhood of Teamsters, AFL-CIO, herein called Local 773, filed a petition in Case 4-UC-354 under Section 9(b) of the Act. On March 19, 1999, Local 6, Bakery, Confectionery & Tobacco Workers International Union, AFL-CIO, herein called Local

6,<sup>1</sup> filed a petition in Case 4-UC-355 under Section 9(b) of the Act. On March 19, 1999, the undersigned issued an Order Consolidating Cases and Notice of Hearing. Upon these petitions, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved claim to represent certain employees of the Employer.

4. The Employer produces and distributes bread and rolls. It operates a number of production facilities and distribution depots in Pennsylvania and neighboring states. In September 1998, the Employer opened a new distribution facility, the Lehigh Valley depot in Bethlehem, Pennsylvania, where it consolidated certain distribution operations previously performed at its Easton and Emmaus, Pennsylvania locations. At the Easton production and distribution facility, Local 6 represented a unit of production and maintenance employees, truck packers and truck mechanics, and Local 773 represented a unit of route salesmen and transport drivers. At the Employer's Emmaus depot, Local 773 represented a wall-to-wall unit of route salesmen, packers and a mechanic. In the September 1998 consolidation, the Employer transferred from Easton to Lehigh Valley both Local 6-represented packers and mechanics and Local 773-represented route salesmen. At about the same time, the Employer transferred from Emmaus to Lehigh Valley the Local 773-represented route salesmen and packers. The parties agree that Local 773 now represents the combined workforce of route salesmen at the Lehigh Valley depot,<sup>2</sup> but filed the instant petitions to resolve the status of the packers and mechanics at the new facility, some of whom had been represented by Local 773 and others by Local 6. The Employer contends that there is a question concerning representation with respect to the Lehigh Valley packers and mechanics, that these employees comprise an appropriate unit, and that the Board should conduct an election in this unit. Local 773 contends that the Lehigh Valley packers must be included in the Local 773-represented unit of route salesmen at the facility, and that there is no question concerning representation with respect to the packers or route salesmen. In the alternative, Local 773 contends that if it is determined that a question concerning representation exists, then the Lehigh Valley packers (or the packers and mechanics) do

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<sup>1</sup> Local 6's name appears as amended at the hearing.

<sup>2</sup> The Employer and Local 773 have not signed a collective bargaining agreement covering the Lehigh Valley route salesmen. At the time of the hearing herein, the record shows that the Employer was applying the Easton Local 773 contract, with some agreed-upon modifications, to the Lehigh Valley route salesmen.

not constitute a separate appropriate unit, and that any election among the packers must include the route salesmen. Local 6 contends that the Lehigh Valley packers and mechanics are part of its Easton production and maintenance bargaining unit and there is no question concerning representation with respect to them. In the alternative, Local 6 contends that if it is determined that a question concerning representation exists, then an election should be conducted in a unit limited to the Lehigh Valley packers and mechanics.

The consolidation involved herein followed the Employer's July 1998 acquisition of Maier's Bakery, a competitor. After the acquisition, the Employer continued to produce and distribute products under the Maier's name and to use some of the Maier's facilities, including the Easton and Emmaus facilities referred to above. At the Easton production and distribution facility, Local 6's bargaining unit of approximately 115 employees included four packers (also called shippers) who pick orders and load route salesmen's delivery trucks, about 10 packers who load and unload transport drivers' tractor trailers, and four mechanics (also called garage employees or fleet mechanics) who maintain route delivery trucks. Local 773's Easton bargaining unit included about 18 transport drivers who drive tractor trailers, and 39 route salesmen who sell and deliver product on assigned routes (including "wholesale salesmen" who have regularly assigned routes, and "wholesale route riders" who do not). At the Emmaus route distribution depot, approximately 30 miles from the Easton facility, Local 773 represented 29 route salesmen, four route delivery truck packers and one route delivery truck mechanic in a single, wall-to-wall unit. Following the Employer's acquisition of Maier's Bakery, the Employer assumed the then-current collective bargaining agreements between Maier's and Local 6 and Local 773 covering employees at the Easton and Emmaus facilities. Local 6's Easton collective bargaining agreement was effective from May 1996 to May 1999. Local 773's separate collective bargaining agreements covering its Easton and Emmaus units were each effective from June 1997 to June 2000.

On September 22, 1998, following plans commenced by Maier's Bakery before its acquisition, the Employer opened the new Lehigh Valley distribution depot in Bethlehem, Pennsylvania in between the Easton facility and the Emmaus depot. The same day, the Employer moved Easton's route distribution operations to Lehigh Valley, including Easton's 39 route salesmen, four route delivery truck packers, and four route delivery truck mechanics. Easton's production operations, including the Local 6-represented production and maintenance employees, and Easton's transport operations, including the Local 6-represented transport packers and Local 773-represented transport drivers, remained at Easton. The Employer continued to recognize Local 6 as the representative of the packers and mechanics transferred to Lehigh Valley, and Local 773 as the representative of the route salesmen transferred to Lehigh Valley. On September 26, 1998, the Employer and Local 6 entered into an addendum to their Easton collective bargaining agreement which specifically included the newly-transferred Lehigh Valley packers and mechanics in Local 6's Easton bargaining unit.

On September 29, 1998, the Employer closed its Emmaus route distribution depot, and transferred the operations, including its 29 route salesmen and four packers, to Lehigh Valley.<sup>3</sup> After the transfer, the Employer continued to recognize Local 773 as

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<sup>3</sup> The single mechanic employed at Emmaus was laid off and not transferred to Lehigh Valley.

the representative of the route salesmen from Emmaus. However, the Employer initially considered the four packers from Emmaus to be an accretion to the Local 6-represented group of four packers and four mechanics from the Easton facility. After both unions objected to the Employer's actions regarding the former Emmaus packers at Lehigh Valley, the Employer withdrew recognition from Local 6 with respect to the Lehigh Valley packers and mechanics, and the parties filed the instant petitions. As of the hearing, there were a total of nine packers at Lehigh Valley, five who had been represented by Local 6 at Easton<sup>4</sup> and four who had been represented by Local 773 at Emmaus. There were four mechanics, all of whom had been represented by Local 6 at Easton. There were also approximately 51 route salesmen.

The Lehigh Valley packers, mechanics and route salesmen perform the same functions at Lehigh Valley that they formerly performed at Easton and Emmaus. Packers and mechanics continue to be paid on an hourly basis, punch a time clock and receive overtime. The route salesmen continue to be paid a base salary plus commissions on items sold, do not receive overtime, work varying numbers of hours each week and earn varying amounts of money. The packers spend 100 percent of their time at the Lehigh Valley depot. Mechanics spend approximately 90 percent of their time at the depot, though in a separate building from the one used by the packers and route salesmen. There is no evidence that packers or mechanics drive delivery trucks. Route salesmen spend approximately 90 percent of their day out on the road, driving delivery trucks and servicing customers, and the level of their compensation depends on how well they satisfy existing customers and cultivate new ones. There is no evidence that packers and mechanics have any contact with customers.

All Lehigh Valley employees receive the same holidays, but route salesmen are off duty the day of the holiday, while packers are off the day before the holiday and must work the holiday to prepare for the following day's deliveries. Vacation pay for route salesmen and route riders is computed based on their base salary and commission, while packers and mechanics receive their hourly rate. The packers and mechanics work shifts. Route salesmen work varying hours depending on the nature of their routes and their customers' needs. Route salesmen normally work Monday, Tuesday, Thursday, Friday and Saturday, while packers work Sunday, Monday, Wednesday, Thursday and Friday.

There are separate seniority lists at Lehigh Valley for packers, mechanics and route salesmen, and there is no evidence of interchange between the groups. At the Easton bakery and Emmaus depot before the consolidation, there were also separate seniority lists for each group, though the Easton packers were part of the same seniority list as the transport packers who have remained at Easton. Mechanics work in their own building, which has its own break room and rest room, and have little contact with packers and route salesmen. Depending on the shifts they work, some packers may have regular contact with route salesmen, while others may have very little contact.

Packers and mechanics receive no formal training from the Employer. Packers receive some on the job training by the Employer, and mechanics must have training and experience before they are hired. Route salesmen receive a formal four-week training program and must be familiar with a sales training manual. Lehigh Valley's packers and

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<sup>4</sup> The fifth Local 6-represented packer was added to the group sometime after September 1998.

mechanics are generally self-supervised in their day-to-day duties and each classification has a lead man. Like the packers at the Emmaus depot, the Lehigh Valley packers report to the Branch Manager, but may also consult with managers at other facilities to resolve distribution problems. At the Easton facility before the consolidation, the packers reported to a shipping supervisor, who in turn reported to a shipping manager, positions which do not exist at Lehigh Valley. Fleet mechanics report to the Employer's Fleet Maintenance Manager in Reading, Pennsylvania. The route salesmen report to sales supervisors, each of whom is responsible for approximately ten routes. Sales supervisors report to the Branch Manager. Sales supervisors do not supervise packers or fleet mechanics. Labor relations issues for the Lehigh Valley packers and mechanics are generally handled by the Human Resources Manager at the Easton facility or the Branch Manager at Lehigh Valley, while labor relations issues for the Lehigh Valley route salesmen are handled by the Employer's Director of Human Resources and Labor Relations, or by a Sales Human Resources Manager.

Director of Human Resources and Labor Relations Rodney Malarchik oversees 23 of the Employer's 50 sales branches or depots where route salesmen and packers are employed, and where mechanics may or may not be employed. At 15 of these 23 depots, a single labor organization represents all the depot's employees, while at seven of these depots one labor organization represents the route salesmen and another labor organization represents the packers or the packers and mechanics.

Local 773 and Local 6 each contend, for different reasons, that there is no question concerning representation with respect to the packers at the new Lehigh Valley depot. Local 773 argues that the merger of workforces created a single appropriate unit of route salesmen and packers at Lehigh Valley, and that the Local 773-represented group within this new merged unit is so predominant that there is no reason to question Local 773's majority status as representative for the entire unit. However, as I find below, such a unit is not the only appropriate unit, and the petitioned-for unit of packers and mechanics is also appropriate. Within this smaller unit, the four Local 773-represented packers from Emmaus constitute a minority.

Local 6 contends that the initial transfer of Easton employees to Lehigh Valley on September 22, 1998, before the arrival of the Emmaus employees a week later, created two new appropriate units: route salesmen who had transferred from Local 773's Easton unit, and packers and mechanics who had transferred from Local 6's Easton unit. Local 6 argues that under the Board's decision in *Gitano Group*, 308 NLRB 1172 (1992), the Employer was required to recognize Local 6 as the representative of the new packer and mechanic unit, and Local 6 and the Employer then properly agreed on September 26, 1998 to cover these employees under Local 6's Easton contract. According to Local 6, the four Local 773-represented packers who transferred from Emmaus on September 29, 1998 were added to this Lehigh Valley unit in the same manner as unrepresented new hires to an expanding unit after an employer has recognized a union based upon majority status within a "substantial and representative complement of its intended workforce."<sup>5</sup> Contrary to Local 6, however, the transfer of the Easton workforce to Lehigh Valley cannot be viewed in isolation from its merger with the Local 773-represented Emmaus

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<sup>5</sup> In its brief, Local 6 withdrew its claim that the Lehigh Valley packers and mechanics were an accretion to Local 6's Easton bargaining unit.

workforce a week later. *Gitano Group* involves an employer's obligation to bargain with a union as the representative of a new location's workforce composed of transfers from a union-represented unit who have been merged with *unrepresented* employees, and does not address the merger, as here, of separately represented groups. See *Id.* at 1175; see also *Armco Steel Co.*, 312 NLRB 257, 259 (1993)

In cases where an employer merges two groups of employees who have been historically represented by different unions, the Board finds that the merger raises a question concerning representation, unless one of the merged groups constitutes such a large proportion of the merged workforce that there is no reason to question the continued majority status of that group's bargaining representative. See *Metropolitan Teletronics Corp.*, 279 NLRB 957, 960 (1986), *enfd.* 819 F.2d 1130 (2d Cir. 1987); *Martin Marietta Co.*, 270 NLRB 821, 823 (1984); *Massachusetts Electric Co.*, 248 NLRB 155, 157 (1980); *Boston Gas Co.*, 221 NLRB 628, 629 (1978). Here, the unit of thirteen employees found appropriate below includes nine Local 6-represented employees (69 percent) and four Local 773-represented employees (31 percent). Neither Union represents such an overwhelming majority of the employees in the unit as to require the Employer to recognize one union over the other as the employees' representative. See *Custom Deliveries*, 315 NLRB 1018, 1020 (1994) (Board will find a substantial claim of interest and a question concerning representation where nonstranger union has represented 30 percent or more of the bargaining unit). Accordingly, I find that there is a question concerning representation with respect to the packers and mechanics and I shall dismiss the petitions in Cases 4-UC-354 and 4-UC-355. As noted above, the Employer has continued to recognize Local 773 as the collective bargaining representative of the route salesmen at Lehigh Valley. Thus, the subject RM petition does not raise a question concerning representation as to the route salesmen. *Westinghouse Electric Corp., X-Ray Division*, 129 NLRB 846, 847 (1960).

As noted, the Employer petitioned for an election in a unit of packers and mechanics, and Local 6 agrees that such a unit is appropriate. Local 773 contends the packers must be included with the route salesmen. Local 773 also contends that if the packers can be separated from the route salesmen, then the packers and mechanics cannot appropriately be included together and must be in separate units. Both Unions indicated they are willing to proceed to an election in any unit found appropriate.

I find, initially, that the thirteen packers and mechanics share a community of interest separate from the fifty-one route salesmen. Packers and mechanics are hourly-paid, work fixed hours, have no contact with customers, perform no sales work, and spend all or nearly all of their time at the Lehigh Valley depot (if in different buildings at the depot) performing support work for the route salesmen. Route salesmen are paid on a commission basis, work varying hours, and spend nearly all of their time away from the facility driving trucks, servicing customers and generating sales. Packers work different work weeks (i.e., a day earlier) than the route salesmen. While some packers have regular contact with route salesmen, others have little contact and, in any event, packers and route salesmen spend little time in proximity with each other. Route salesmen receive special sales-related training unlike anything received by the packers or mechanics. Route salesmen have separate first-line supervision, and labor relations issues for route salesmen are handled by different managers than for the hourly employees. With respect to the history of collective bargaining, the Lehigh Valley

employees come from different facilities where route salesmen were in a unit separate from packers and mechanics (Easton) and where they were combined (Emmaus). While the Employer has other depots where the packers and route salesmen are represented in combined units, there are yet other depots where packers or packers and mechanics are represented in a unit separate from the route salesmen. Accordingly, I find that the route salesmen have terms and conditions of employment which substantially differ from those of the packers and mechanics, and that the packers and mechanics together constitute a separate appropriate unit based on the similarity of their terms and conditions of employment, their common location, and the history of their inclusion in the same unit at both Easton and Emmaus. See *Dr Pepper Bottling Co.*, 228 NLRB 1119, 1120 (1977); *Alaska Fish and Farm Products*, 212 NLRB 730 (1974); *Plaza Provision Co.*, 134 NLRB 910, 912 (1961).

Local 773 contends that if an election is to be conducted among the Lehigh Valley packers separate from the route salesmen, then no such election should be held until the Employer effects its contemplated transfer of thirteen route salesmen and two packers, all of whom are Local 773-represented, from another Bethlehem, Pennsylvania distribution depot which is less than half a mile from the Lehigh Valley depot. The Employer and Local 6 contend that plans for this merger are currently too speculative to affect the instant election among Lehigh Valley depot employees. This nearby depot handles route distribution for the Employer's "Stroehmann" brand products, unlike the Lehigh Valley depot which handles only "Maier's" products. The record shows that the Employer has contemplated closing the Stroehmann Bethlehem depot and moving its operations to the Lehigh Valley depot. While the Employer earlier considered moving in April 1999, it dropped those plans, and the Employer currently has no firm plans for closure of the Stroehmann Bethlehem depot, nor any definite timetable for doing so. The Employer has over two additional years left on the Stroehmann Bethlehem depot lease. The Employer has also decided to wait for the resolution of the instant representational issues at Lehigh Valley as well as other issues raised by the acquisition of Maier's Bakery and the Employer's continuing consolidation of the Maier's and Stroehmann operations. I find the possible future transfer of the Stroehmann Bethlehem depot packers to the Lehigh Valley depot too speculative at this point to warrant a delay in the resolution of the instant question concerning representation.

Based on the foregoing, I find that the following employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time packers and mechanics employed by the Employer at its Lehigh Valley depot in Bethlehem, Pennsylvania, excluding all wholesale route salesmen, wholesale route riders, sales supervisors, guards and supervisors as defined in the Act.

#### **ORDER DISMISSING PETITIONS IN CASES 4-UC-354 AND 4-UC-355**

**IT IS HEREBY ORDERED** that the petitions filed in Cases 4-UC-354 and 4-UC-355 be, and they hereby are, dismissed.

## **DIRECTION OF ELECTION IN CASE 4-RM-1235**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,<sup>6</sup> subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**LOCAL 6, BAKERY, CONFECTIONERY &  
TOBACCO WORKERS INTERNATIONAL UNION,  
AFL-CIO**

**or**

**TEAMSTERS LOCAL 773, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, AFL-CIO**

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<sup>6</sup> Your attention is directed of Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.



## **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within **7** days of the date of this Decision **3** copies of an election eligibility list, containing the **full** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before August 30, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by September 7, 1999.



Dated August 23, 1999

at Philadelphia, PA

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**DOROTHY L. MOORE-DUNCAN**  
Regional Director, Region Four

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